

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Michael G. MIKURAK)	Group Art Unit: 3622
)	
Application No.: 09/444,774)	Examiner: Arthur D. Duran
)	
Filed: November 22, 1999)	Confirmation No.: 9073
)	
For: ENHANCED VISIBILITY DURING)	
INSTALLATION MANAGEMENT IN A)	
NETWORK-BASED SUPPLY CHAIN)	
ENVIRONMENT (as amended))	

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Pursuant to 37 C.F.R. § 41.41, Appellant presents this Reply to the Board of Patent Appeals and Interferences ("Board") in response to the Examiner's Answer mailed July 8, 2009 ("Examiner's Answer"). The time period for filing the Reply Brief is two months from the date of the Examiner's Answer. Accordingly, this Reply Brief is timely filed on or before September 8, 2009.

For the reasons presented in the Appeal Brief under 37 C.F.R. § 47.37 filed on May 18, 2009 ("Appeal Brief"), as well as for the reasons set forth below, Appellant kindly requests the Board to reverse all of the outstanding claim rejections, so that pending claims 70, 73-76, 82-87, 90-93, 99-101, 102-104, 107-109, and 112-115 may be allowed without further delay.

Remarks begin on page 2 of this paper.

REMARKS

In addition to the arguments set forth in Appellant's Appeal Brief filed on May 18, 2009, Appellant provides the following remarks regarding the Examiner's Answer mailed July 8, 2009.

I. Status of Rejection

Claims 70, 73-76, 87, 90-93, 104, and 107-109 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,167,378, to Webber (hereinafter *Webber*) in view of U.S. Patent No. 6,289,385, to Whipple et al. (hereinafter *Whipple*). In the Examiner's Answer, canceled claims 77-81, 94-98, and 110-111 had been included in the list of claims rejected due to *Webber* in view of *Whipple*. See Examiner's Answer at 3. Appellant acknowledges the receipt of the Communication dated August 17, 2009, in which the Examiner confirms that claims 77-81, 94-98, and 110-111 had been canceled and are not to be referenced in Section (9) Grounds of Rejection. Therefore, the Examiner's rejection of claims due to *Webber* in view of *Whipple* is applicable only to pending claims 70, 73-76, 87, 90-93, 104, and 107-109.

Claims 82-84, 86, 99-101, 103, and 112-115 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over *Webber* in view of *Whipple* in view of U.S. Patent No. 6,373,498, to Abgrall (hereinafter *Abgrall*).

Claims 85 and 102 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over *Webber* in view of *Whipple* in view of *Abgrall* in view of U.S. Patent No. 5,991,735, to Gerace (hereinafter *Gerace*).

II. Status of Amendments

Appellant acknowledges the Examiner's entry of the Amendment Under 37 C.F.R. § 1.116(b)(2) filed on May 18, 2009, as indicated in the Advisory Action dated August 7, 2009.

III. **Response to the Examiner's Arguments in the Answer**

In the Examiner's Answer, the Examiner maintains the final rejections of claims 70, 73-76, 82-87, 90-93, 99-101, 102-104, 107-109, and 112-115 under 35 U.S.C. § 103(a). For the reasons set forth in the Appeal Brief and the additional reasons set forth below, Appellant respectfully requests reversal of the final rejection of the above-identified claims.

A. ***Webber* and *Whipple* fail to teach "causing a framework manager using a network to use and evaluate the information provided by the service provider . . . and the manufacturer to match the service to the offerings."**

Claim 70 recites a method for a framework manager to provide installation management of a service in a network-based supply chain framework between at least two independent business entity users such as service providers, vendors, resellers, manufacturers and the like. Among other elements, claim 70 recites "causing a framework manager using a network to use and evaluate the information provided by the service provider . . . and the manufacturer to match the service to the offerings." Both *Webber* and *Whipple* fail to teach or suggest at least "causing a framework manager using a network to use and evaluate the information provided by the service provider . . . and the manufacturer to match the service to the offerings."

The Examiner asserts that "the prior art renders obvious a framework manager using and evaluating the information to match the service to the offerings." Examiner's Answer at 21. The Examiner identifies several citations in *Webber* to support his assertion. See Examiner's Answer at 19-21. However, none of these citations teaches "match[ing] the service to the [manufacturer] offerings."

As noted in the Appeal Brief, *Webber* teaches a method that automates a vertical supply chain for goods or service. "As shown by the above examples, the entire **vertical chain** of manufacturing, distribution and sales involved in a commercial transaction is served by the system." *Webber* at col. 8, lines 38-40, Emphasis Added. In the *Webber* system, suppliers and acquirers are linked. *Webber* does not disclose linking suppliers and suppliers. "A contract for

an entity to **supply** specific goods or services is linked to another contract for another entity to **acquire** those specific goods or services.” *Webber* at col. 9, lines 50-52, Emphasis Added. “By following multiple links within **vertically related entities**, the entire chain of supply is navigated.” *Webber* at col. 10, lines 18-20, Emphasis Added. See *Webber* at Fig. 4.

Webber at col. 20, lines 15-21, discloses storing a request to purchase goods or services until a supplier posts a proposal to sell the goods or services. *Webber* at col. 20, lines 29-42, discloses searching a “master list” of suppliers if the requested good is entirely unavailable. In both cases, no “match[ing] the service to the [manufacturer] offerings,” as is required by claim 70, is disclosed. All that occurs is making contact between an acquirer and a supplier. Accordingly, it appears that the Examiner has not fully considered the language of claim 70, which recites “causing a framework manager using a network to use and evaluate the information provided by the service provider . . . and the manufacturer to match the service to the offerings.” Appellant respectfully submits that, in element (c) of claim 70, the “service” recited refers to “a service provided by a service provider”, as recited in element (a) of claim 70, and that the “offerings” refers to “manufacturer offerings by a manufacturer”, as recited in element (b) of claim 70. Appellant respectfully submits that the portion of claim 70 that recites “match[ing] the service [provided by a service provider] to the [manufacturer] offerings” cannot be ignored.

For at least these reasons, *Webber* and *Whipple*, alone or in combination, fail to teach or suggest “causing a framework manager using a network to use and evaluate the information provided by the service provider . . . and the manufacturer to match the service to the offerings,” as recited in claim 70. Claim 70 is thus allowable over *Webber* in view of *Whipple* in light of their failure to teach the recited elements.

- B. *Webber* and *Whipple* fail to teach “causing a framework manager . . . to use the service and manufacturer offerings information to manage installations through the use of a collaborative planning tool which facilitates the**

transfer of the information received from the service provider and the information received from the manufacturer.”

Claim 70 recites “causing a framework manager . . . to manage installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.” *Webber* and *Whipple*, alone or in combination, fail to teach or suggest at least the recited element.

The Examiner does not rely on *Whipple* to teach or suggest this limitation, instead asserting that “*Webber* discloses installations [and] that it would have been obvious . . . that *Webber*’s contracts management matching and managing method can involve contracts involving installation management.” Examiner’s Answer at 22. Assuming the Examiner’s conclusion that *Webber* teaches “installation” is correct, which Appellant does not concede, *Webber* does not make “installation management” obvious. As Appellant stated in the Appeal Brief, the citation to *Webber* relied on by the Examiner at most reveals that templates for drafting contracts are installed on computers, and teaching template installation, without more, does not teach anything about whether or how to manage template installation, let alone what steps or process would be involved in managing template installation, and further let alone that installation management is a topic of any contracts managed by *Webber*’s contracts management matching and managing method. Further, teaching template installation, without more, does not teach anything about whether or how to incorporate template installation into *Webber*’s contracts management matching and managing method. Therefore, it does not necessarily follow from a passing comment that templates can be installed that “*Webber*’s contracts management matching and managing method can involve contracts involving installation management.” Therefore, the Examiner’s conclusion is without support.

Further, assuming *arguendo* that “*Webber*’s contracts management matching and managing method can involve contracts involving installation management,” *Webber* does not teach “installation management” as recited in claim 70. To support his finding that installation

management can be broadly interpreted to be rendered obvious by *Webber*, the Examiner asserts, “Appellant’s claims present no special features regarding installation management as opposed to other types of project management.” Examiner’s Answer at 22. This is not correct. The “installation management” recited in claim 70 comprises “transfer of the information received from the service provider and the information received from the manufacturer.” Therefore, the “installation management” recited in claim 70 involves the recited “service” plus the recited “manufacturer’s offering.” Accordingly, it appears that the Examiner has interpreted claim 70 without the language limiting the recited “installation management.”

Appellant respectfully submits that claim 70 recites elements not disclosed in *Webber*, and *Whipple*, alone or in combination, namely “causing a framework manager . . . to use the service and manufacturer offerings information to manage installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.” Claim 70 is thus allowable over *Webber* in view of *Whipple* in light of their failure to teach or render obvious the recited elements.

- C. ***Webber* and *Whipple* fail to teach or suggest “a service provider” as one of the “independent business entity users” for which a “framework manager us[es] a network to . . . manage installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.”**

The Examiner makes the assertion that “*Webber* discloses . . . computer service providers.” Examiner’s Answer at 23. Appellant respectfully disagrees and submits that *Webber* does not teach or suggest “a service provider” as one of the “independent business entity users” for which a “framework manager us[es] a network to . . . manage installations through the use of a collaborative planning tool which facilitates the transfer of the information

received from the service provider and the information received from the manufacturer,” as recited in independent claim 70.

The Examiner cited to col. 9, lines 43-51, to support his assertion. See Examiner’s Answer at 23. However, the cited section of *Webber* teaches “[a] contract for an entity to **supply** specific goods or services [that] is linked to another contract for another entity to **acquire** those specific goods or services.” *Webber* at col. 9, lines 50-52, Emphasis Added. As noted above, at best, the *Webber* contracts are in a **vertical supply chain**, and involve a **supplier**, an **acquirer**, and other parties in a **vertical supply chain**. The disclosed links in *Webber* between contracts are not outside the vertical supply chain. Assuming the Examiner’s conclusion that *Webber* teaches “a service provider” is correct, which Appellant does not concede, *Webber* does not render obvious “a service provider” as one of the “independent business entity users” for which a “framework manager us[es] a network to . . . manage installations through the use of a collaborative planning tool which facilitates the transfer of the information received from **the service provider and** the information received from **the manufacturer**.” Claim 70, Emphasis Added.

The Examiner does not rely on *Whipple* to teach or suggest this limitation. Therefore, for at least these reasons, *Webber* and *Whipple*, alone or in combination, fail to teach or suggest “a service provider” as one of the “independent business entity users” for which a “framework manager us[es] a network to . . . manage installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.” Claim 70 is thus allowable over *Webber* in view of *Whipple* in light of their failure to teach the recited elements.

- D. ***Webber* and *Whipple* fail to teach or suggest “the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.”**

The Examiner makes the assertion that “*Webber* discloses providing a collaborative planning tool for managing the collaboration between the match service provider and the manufacturer.” Examiner’s Answer at 24. Appellant respectfully disagrees and submits that *Webber* does not teach or suggest “the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer,” as recited in claim 70. As noted above, the *Webber* parties are in a vertical supply chain. Accordingly, the *Webber* system does not need to support collaboration between parties (such as the recited “service provider” and “manufacturer”) that are not necessarily in a vertical supply chain. Therefore, *Webber* does not teach the recited element, “the use of a collaborative planning tool which facilitates the transfer of the information **received from the service provider and** the information received from **the manufacturer**,” as recited in independent claim 70.

The Examiner does not rely on *Whipple* to teach or suggest this limitation. Therefore, for at least these reasons, *Webber* and *Whipple*, alone or in combination, fail to teach or suggest ““manag[ing] installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from the manufacturer.” Claim 70 is thus allowable over *Webber* in view of *Whipple* in light of their failure to teach the recited elements.

E. A *prima facie* case that independent claim 70 is obvious in view of *Webber* and *Whipple* has not been established.

In the Appeal Brief, Appellant asserted that “neither *Webber* nor *Whipple* teaches the above-quoted elements recited in claim 70. Thus, the Office Action [dated August 27, 2008] failed to properly set forth the scope and content of *Webber* and *Whipple*, and to delineate the differences between claim 70 and the cited references.” Appeal Brief at 22. Without the proper framework for assessing obviousness under 35 U.S.C. § 103, the Examiner fails to clearly

articulate any reason why claim 70, as a whole, would have been obvious in view of *Webber* and *Whipple*.

Neither the cited Office Action nor the Examiner's Answer contains a tenable rationale as to *why* and *how* one of ordinary skill in the art would combine *Webber* and *Whipple* so as to arrive at the combination recited in claim 70.

The Examiner's Answer contains an assertion that "*Whipple* provides an obvious extension of the project management capabilities of *Webber*. Hence it would be obvious . . . to extend the project planning capabilities of *Webber* with some of the project planning capabilities of *Whipple*." Examiner's Answer at 25. The assertion is essentially a conclusory statement that the identified modifications could be performed. The Examiner has not proved that "*Whipple* provides an obvious extension of the project management capabilities of *Webber*." Further, the elements discussed above as not being disclosed by *Webber* are similarly not taught by *Whipple*. Therefore, even if *Webber* were modified as the Examiner proposes, the resultant method would not feature the above quoted elements of claim 70. Because the resultant method would lack a recited element of Appellant's invention, it would not be a predictable variation of Appellant's invention.

For at least these reasons, a *prima facie* case of obviousness with respect to claim 70 has not been established and, therefore, the rejection of claim 70 under 35 U.S.C. §103 as being obvious over *Webber* in view of *Whipple* are improper and should be withdrawn.

F. *Webber* and *Whipple* fail to teach or suggest "milestone-based project planning."

The Examiner asserts that "the combination of the prior art renders obvious milestone-based project planning." Examiner's Answer at 26. This is not correct.

First, the Examiner asserts that the recitation in claim 73, "the framework manager . . . facilitat[ing] milestone-based project planning between the matched service provider and the

manufacturer,” is “in the preamble of dependent claim 73 [and therefore it] does not matter that it is the framework manager who facilitates the milestone based planning.” Examiner’s Answer at 25. It appears that the Examiner has misinterpreted the line break in claim 73 to be a dividing point between the preamble and the claim elements. However, the line break was included in the claim to improve readability and not to divide the preamble from the rest of the claim. Further, the “framework manager” recitation in claim 73 appears after the words, “A method as recited in claim 70, further comprising,” in claim 73, and therefore is not part of the preamble of claim 73. Finally, the term “framework manager” appears in the body of claim 70 from which claim 73 depends, and therefore is a properly recited claim element.

Second, as support for his conclusion that the elements recited in claim 73 are obvious, the Examiner alleges that *Webber* Fig. 9, item 1007, constitutes the claimed “framework manager.” Examiner’s Answer at 25. Fig. 9, item 1007 is a communications and activity platform (“CAP”). See *Webber* at col. 6, lines 20-21. The Examiner asserts that the “framework manager [coordinates] the project management between the parties” and then cites *Webber* col. 17, lines 24-30, and col. 19, lines 54-63, as teaching “project planning with specific time period and time frames where goals and/or objectives must be met.” Examiner’s Answer at 25-26.

Appellant submits that coordinating project management between parties, without more, does not disclose “the framework manager using the network to facilitate milestone-based project planning between the matched service provider and the manufacturer,” as recited in claim 73. Further, assuming *arguendo* that the Examiner’s conclusion that *Webber* teaches the claimed “framework manager” is correct, *Webber* still does not render obvious the recited features of claim 73.

Webber col. 17, lines 24-30, discloses “specific activity [that is] initiated automatically at the time schedule.” *Webber* col. 19, lines 54-63, discloses contracts, “[w]hen triggered by events, [that] are linked to activate.” Automating initiating activity according to a time schedule

and activating contracts upon an event trigger, without more, is not "milestone-based project planning," as recited in claim 73. Therefore, in neither those two sections of *Webber*, nor elsewhere in *Webber*, is there disclosure of "the framework manager using the network to facilitate milestone-based project planning between the matched service provider and the manufacturer," as recited in claim 73.

G. Conclusion

Because the references cited by the Examiner fail to render the claimed subject matter obvious under 35 U.S.C. § 103(a), Appellant requests reversal of the Examiner's rejection.

Please grant any extension of time required to enter this Reply Brief and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 8, 2009

By: 

Maura K. Moran
Reg. No. 31,859
(617) 452-1657